IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO. 2345 OF 2004

Mukesh @ Mukya Kisan Pawar .. Applicant.

vs.

The State of Maharashtra. .. Respondent.

Mr. P.J. Dangre & R.N. Pandit for applicant.

Mrs. U.V. Kejriwal APP., for State.

CORAM : J.N. PATEL, AND

SMT. ROSHAN DALVI, JJ.

DATE : 28th August, 2006.

P.C.

. Heard.

2. This is a reference made to the High Court under Section 318 of the Code of Criminal Procedure to pass appropriate orders in case of one of the co-accused Mukesh who is son of original accused nos. 1 and 2 i.e. Kisan Devichand Pawar and Smt. Umabai Kisan Pawar.

2. The said Mukesh Kisan Pawar came to be prosecuted on the charge of having committed offences under sections 302, 452, 323 and 427 read

with section 34 of the Indian Penal Code in Sessions Case No. 519/2000 by the Ad-hoc Addl. Sessions Judge, Shri P.M. Dhakephalkar. The learned trial Court by his judgment and order dated 30.12.2002 found all the accused guilty for having committed offences punishable under section 304 Part 2, read with section 34 of the Indian Penal Code and acquitted them of the charge under sections 302, 323 and 452 read with 34 of the Indian Penal Code. The trial Court after hearing the learned advocate appearing for the accused persons, in his discretion imposed different punishments to the accused persons. The original accused no. 1 Kisan Devichand Pawar came to be sentenced to suffer rigorous imprisonment for three years and to pay a fine of Rs. 500/- in default to suffer rigorous imprisonment for one month whereas the original accused no. 2 i.e. the mother of Mukesh Smt. Umabai Kisan Pawar came to be sentenced to suffer simple imprisonment for one year and to pay a fine of Rs. 100/- in default to suffer simple imprisonment for one month. In so far as the original accused no. 3 Mukesh Kisan Pawar is concerned, the matter came to be referred to this Court to pass appropriate order as provided by Section 318 Cr.P.C. because it was found that Mukesh son of Kisan is deaf and dumb and, therefore, was incapable of understanding the proceedings.

3. We may clarify at this stage that none of the persons who are tried and convicted have preferred any appeal and have undergone their sentence including the set off granted by the trial Court under Section 428 of the Cr. P. C. But the original accused no. 3 Mukesh Kisan Pawar is still detained in prison for want of appropriate orders being passed by this Court.

4. In view of the fact that the trial Court has found him guilty of having committed offence under section 304 Part 2 read with 34 of the IPC and taking into consideration the role attributed to him, there cannot be any doubt in one's mind particularly when the decision has not been challenged in appeal that it is Mukesh Kisan Pawar who is the author of the fatal blow and knew the nature of the act he had committed, therefore, considering his incapability and other circumstances, in our view ends of justice would be met if he is awarded same sentence which has been awarded to his father Kisan Devichand Pawar. Therefore, we sentence Mukesh Kisan Pawar for having been found guilty of having committed offence under section 304 Part 2 read with section 34 of IPC to suffer rigorous imprisonment for three years and to pay a fine of Rs. 500/- in default to suffer rigorous imprisonment for one month. In case the said Mukesh Kisan Pawar who is presently in

detention (judicial custody) awaiting orders of this Court has already undergone the sentence, he shall be forthwith released if not required in any other case. Reference stands disposed of accordingly.

5. The Registrar-Judicial to communicate this order to the Superintendent of Prisons, Yerawada Central Prison, Pune.

(J.N. Patel, J.)

(Smt. Roshan Dalvi, J.)